#### TITLE 17. CALIFORNIA AIR RESOURCES BOARD

## NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider regulatory amendments which would establish a mechanism for setting fees to be collected by local districts from major nonvehicular sources of nonattainment pollutants and their precursors to fund part of the Board's California Clean Air Act program for nonvehicular sources for the fiscal years 1997-98 and 1998-99, and any subsequent fiscal years where such fees are authorized by state law.

DATE: January 29, 1998

TIME: 9:30 a.m.

PLACE: Air Resources Board

Board Hearing Room, Lower Level

2020 L Street

Sacramento, California

This item will be considered at a two-day meeting of the Board which will commence at 9:30 a.m., on January 29, 1998, and may continue at 8:30 a.m., January 30, 1998. This item may not be considered until January 30, 1998. Please consult the agenda for the meeting, which will be available at least 10 days before January 29, 1998, to determine the day on which this item will be considered.

#### **INFORMATIVE DIGEST OF PROPOSED ACTION**

<u>Sections Affected</u>: Proposed adoption of new section 90800.8 and amendments to sections 90802 and 90803, title 17, California Code of Regulations (CCR).

In the California Clean Air Act (the "Act," Stats. 1988, ch. 1568), the Legislature imposed a number of requirements on the Board and the local air pollution control and air quality management districts ("districts") and provided a mechanism to help defray the state costs of implementing the Act.

To offset the increased costs of additional state programs related to nonvehicular sources, the Legislature, in section 39612 of the Health and Safety Code, authorized the Board, beginning July 1, 1989, to require districts to collect fees from holders of permits for facilities which emit 500 tons or more per year of any nonattainment pollutant or its precursors. The total amount of funds collected by these fees, exclusive of district administrative costs, was limited to \$3,000,000 in any fiscal year. The authorization to assess these fees expired on July 1, 1997, but was

reinstated and extended for two additional years with the enactment of Assembly Bill 1583 (Stats. 1997, ch. 713) in October of 1997. The new legislation retained the \$3,000,000 cap for each of the two additional fiscal years.

In 1989, the Board approved adoption of sections 90800-90803, title 17, CCR, establishing the California Clean Air Act Nonvehicular Source Fee Regulations. The original regulations included the fee rate and amounts to be remitted to the ARB by the districts for the first year of the program, fiscal year 1989-90. In each subsequent year between 1990 and 1996 the Board approved amendments to the CCAA nonvehicular source fee regulations to add a new section (sections 90800.1 through 90800.7) identifying the amount of fees to be collected by each district for the following fiscal year. In addition to new fee information, several of the annual rulemakings included amendments to the fee regulations which addressed issues related to the applicability of the regulations and the payment of fees which had arisen during the previous fiscal year.

In this rulemaking, the staff is proposing amendments which would establish a mechanism under which the ARB Executive Officer would identify the fees to be assessed and transmitted by each district in fiscal years (FYs) 1997-1998 and 1998-1999, and in any subsequent fiscal year in which the ARB is authorized by state law to require such fees. The mechanism would eliminate the need for future annual rulemakings, while assuring that the districts and affected sources have the opportunity to provide input on the size of the assessments. Because of the limited time remaining in FY 1997-1998, the proposed amendments establish an abbreviated mechanism for the first year. After FY 1998-1999, there would be no fees assessed unless authorized by future legislation.

Starting with FY 1998-1999, each district would be required to submit to the Executive Officer, no later than April 1 of the preceding year, the name and address of each permitted facility that emitted 500 tons or more of any nonattainment pollutant or precursor during the most recent calendar year for which emission estimates are available. The districts would also identify the total tons of each facility's emissions during that year of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 500 tons or more in the year. As has previously been the case, a facility will be exempt if its emissions would otherwise be included solely because the facility is in a district which is designated nonattainment for the state ambient air quality standard for ozone solely as a result of ozone transport.

By May 1, the Executive Officer would notify all districts and affected sources of his or her preliminary determinations on the fees to be assessed and the information on which the fees are based. In determining the total amount to be assessed, the Executive Officer first identifies the revenues needed to recover the costs in the fiscal year for additional ARB programs related to nonvehicular sources, up to the maximum amount authorized by the Legislature (\$3,000,000 for FY 1998-1999). He is then to add an "adjustment amount" of up to three percent, designed to recover unforeseen reductions in collections due to unexpected business closures, and to subtract any carry-over excess revenues from the previous fiscal year. A fee per ton is then determined by dividing the total to be assessed by the total tons of nonattainment pollutants or precursors

individually emitted in annual amounts of 500 tons or more from all of the permitted facilities in the state. Finally, the dollar amount to be transmitted to the ARB by each district is determined by multiplying the fee per ton by the total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more from all of the permitted facilities in the district.

The districts, affected sources and interested parties would have a 30-day opportunity to comment on the Executive Officer's preliminary determinations. After considering any comments, the Executive Officer would by July 1 provide written notice of the final determinations. The districts would proceed to assess and collect the fees, and would transmit the specified dollar amount by January 1.

For FY 1997-1998, the Executive Officer is to provide written notification to each district of the fees to be assessed and the determinations on which the fees are based, no later than 15 days after the proposed amendments become operative. The determinations will be as of the January 29, 1998 hearing date, unless the Executive Officer makes a modification that is based on subsequently received information and is explained in the notification. This approach will assure that the districts and sources are aware of the expected amounts and basis of the fees by the time of the Board hearing. Each district will be responsible for transmitting its share of the 1997-1998 assessment to the ARB by June 15, 1998.

As has been the case for the past several years, the amended regulations will continue to provide for: 1) the collection of the emission fees by districts on a dollar-per-ton basis, 2) recovery of administrative costs by the districts, 3) imposition of additional fees on facilities that do not pay in a timely manner, and 4) relief for districts from the fee collection requirements for demonstrated good cause.

#### **AVAILABILITY OF DOCUMENTS AND CONTACT PERSONS**

The Board staff has prepared a Staff Report which includes the initial statement of reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, 2020 "L" Street, Sacramento, CA 95814, (916) 322-2990. The Board staff has compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the staff person identified immediately below.

Further inquiries regarding this matter should be directed to Don Rake or Cheryl Taylor, Emission Inventory Branch, P. O. Box 2815, Sacramento, California 95812, (916) 322-7304 or (916) 324-7168.

#### COSTS TO PUBLIC AGENCIES, BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Board's Executive Officer has determined that the regulations will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, except as discussed below, or other nondiscretionary savings to local agencies.

The Board's Executive Officer has determined that local agencies will incur some costs as a result of the proposed regulations, in that air pollution control and air quality management districts will incur administrative costs in collecting the fees. Health and Safety Code section 39612 and section 90802(d), title 17, CCR, authorize the districts to recover these administrative costs from facilities subject to the fees. In administering the program for FY 1996-1997, most but not all districts assessed additional fees to cover their administrative costs. Applying the FY 1996-1997 district fee rates to the expected state fee assessments for FY 1997-1998 indicates that the districts will incur costs of approximately \$81,000 for which they will assess additional fees. The districts' administrative costs are not reimbursable state mandated costs because of the districts' authority to recover the costs through fee assessments.

No local agencies have been identified at this time as operating facilities that would be subject to the nonvehicular source permit fees for fiscal year 1997-98. If any local agencies are required to pay permit fees in subsequent fiscal years, these costs would not be reimbursable state mandated costs pursuant to Government Code section 17500 et seq. because the fee regulations apply generally to all facilities in the state which emit 500 tons or more per year of nonattainment pollutants or their precursors and, therefore, do not impose unique requirements on local government agencies.

The Executive Officer has determined that the proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. In FY 1997-1998, approximately 60 facilities in the state are expected to be assessed permit fees under the proposed regulations. Among the operators of these facilities are major oil and gas producers, utilities, and major manufacturing enterprises. It is estimated that the average return on owners' equity for all affected businesses for which financial data are available would have declined by only about 0.02 percent in 1996. The Executive Officer has also determined that the potential cost impact on private persons or businesses directly affected by the proposed regulations will be insignificant.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will have no material impact on the creation or elimination of jobs

within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

The Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulations will not affect small businesses because no major nonvehicular sources subject to the regulations are considered to be small businesses.

Before taking action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **SUBMITTAL OF COMMENTS**

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P. O. Box 2815, Sacramento, CA 95812, no later than 12:00 noon, January 28, 1998, or received by the Clerk of the Board at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulations.

#### STATUTORY AUTHORITY AND HEARING PROCEDURES

The regulations are proposed under that authority granted in sections 39600, 39601 and 39612 of the Health and Safety Code. The regulations are proposed to implement, interpret, or make specific sections 39002, 39500, 39600 and 39612 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 of the Government Code.

Following the public hearing, the Board may adopt the proposed regulations as proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulations with other modifications if the regulations as modified are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulations as modified could result from the proposed regulatory action; in such event, the full text of the regulations with the modifications clearly indicated will be made available to the public, for written comment,

at least 15 days before they are adopted. The public may request the text of the modified regulations from the Board's Public Information Office, 2020 "L" Street, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny Executive Officer

Date: December 2, 1997

## State of California AIR RESOURCES BOARD

#### STAFF REPORT

## PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

Date of Release: December 12, 1997 Scheduled for Consideration: January 29, 1998

#### Prepared by:

Emission Inventory Branch Technical Support Division

This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

#### **ACKNOWLEDGMENTS**

This report was prepared with the help of the staff from others from the Air Resources Board staff. We particularly thank Tom Jennings of the ARB's Office of Legal Affairs; Larry Morris and Judy Tanimoto of the ARB's Administrative Services Division; and Reza Mahdavi of the ARB's Research Division for their contributions.

**Principal Authors** 

Don Rake Cheryl Taylor Technical Support Division

Reviewed and Approved by

Terry McGuire, Chief, Technical Support Division Gary Agid, Assistant Chief, Technical Support Division Linda Murchison, Chief, Emission Inventory Branch Dale Shimp, Manager, Emission Inventory Analysis Section

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#### **ATTACHMENTS**

- A. PROPOSED FEE REGULATIONS
- B. SECTION 39612 OF THE HEALTH AND SAFETY CODE
- C. NOTICE OF CONSULTATION MEETING
- D. CALIFORNIA BUSINESS IMPACTS OF PERMIT FEE REGULATIONS FOR NONVEHICULAR SOURCES
- E. PRELIMINARY ESTIMATE OF EMISSIONS AND FEE RATES AS OF DECEMBER 5, 1997

## State of California AIR RESOURCES BOARD

Staff Report: Initial Statement of Reasons for Proposed Rulemaking

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

Date of Release: December 12, 1997 Scheduled for Consideration: January 29, 1998

#### I. <u>INTRODUCTION AND BACKGROUND</u>

This report discusses a proposal of the staff of the Air Resources Board (ARB) for regulatory amendments that would require the air pollution control and air quality management districts to continue to assess permit fees on large, nonvehicular sources of air pollution to help defray the costs to the ARB of continued implementation of mandates of the California Clean Air Act of 1988 (the "Act" or "CCAA", Stats. 1988, ch. 1568). The fees would be assessed during fiscal years 1997-98 and 1998-99, and in future years if the authority to assess the fees is extended. Assembly Bill 1583 (Stats. 1997, ch. 713) reinstated and extended the authority to assess fees originally granted to the ARB by the CCAA through June 30, 1999. This authority had become inoperative on July 1, 1997. The proposed regulatory language is contained in Attachment A to this report. The fees are authorized by section 39612 of the Health and Safety Code (Attachment B).

The Act requires attainment of state ambient air quality standards by the earliest practicable date. As part of this mandate, the Act requires the ARB and the air pollution control and air quality management districts to take various actions to reduce air pollution from motor vehicles, industrial facilities, and other emission sources. Additionally, AB 1583 mandates that the ARB give priority for expenditure of these permit fees on specified activities. These activities are discussed later in this report.

In order to recover some of the costs of the state programs required by the Act and AB 1583 related to nonvehicular sources, the Act and subsequently AB 1583 authorized the Board to require the districts, beginning July 1, 1989, to collect additional permit fees for facilities which are located in designated nonattainment areas and which emit 500 tons or more per year of any nonattainment pollutant or its precursors from equipment authorized to operate by district permit.

Districts have established permit systems for nonvehicular sources of air pollution pursuant to Health and Safety Code sections 42300, 42301 and 42310. By law, the total fee amount to cover program costs, exclusive of district administrative costs, may not exceed \$3,000,000 in any fiscal year. The fees may be assessed annually through June 30, 1999.

The staff's proposal, which is in many ways similar to prior regulations adopted by the Board for the CCAA fee program, is the subject of a public consultation meeting scheduled for December 10, 1997. Districts, representatives of all facilities identified as being potentially subject to the fees, and the public were notified of the meeting. A copy of the meeting notice is included as Attachment C. However, this proposal differs from those of earlier years in that (1) the regulation being proposed will cover both fiscal years 1997-98 and 1998-99 as authorized by AB 1583 and future years if the fee authority is extended; and (2) the fee regulation will contain the formula used for calculating the fee amount rather than specifying the dollar amount to be collected by each district. This structural change is being proposed because of the short time frame that exists between approval of AB 1583 and the first fiscal year for which the fees will be assessed.

The ARB has used the fees collected pursuant to the Act to partially defray the costs of implementing the nonvehicular requirements of the Act, which have significantly exceeded \$3,000,000 per year. AB 1583 identifies a number of activities which should be given priority for the expenditure of the fees. These priorities include the following activities:

<u>Air Quality Indicators</u>: identifying air quality-related indicators that may be used to measure or estimate progress in the attainment of state ambient air quality standards.

<u>Population Exposure</u>: establishing a uniform methodology for assessing population exposure to air pollutants.

<u>Emission Inventory</u>: updating the emission inventory, including emissions that cause or contribute to the nonattainment of ambient air quality standards.

<u>Mitigation of Transport</u>: identifying, assessing, and establishing mitigation requirements for the effects of interbasin transport of air pollutants.

<u>Nonvehicular Source Control Measures</u>: updating the ARB's guidance to districts on ranking control measures for nonvehicular sources based on the cost effectiveness of those measures in reducing air pollution.

The fee amounts to be collected by each district for each fiscal year will be calculated based on the most recent calendar year for which emission estimates for all affected districts are available. This means that the fees for fiscal year 1997-98 will be based on available emission data for calendar year 1995, which are the most recently available statewide emission data, and the fee

amounts to be collected by districts for fiscal year 1998-99 are expected to be based on available emission data for calendar year 1996.

The identification of nonattainment pollutants and precursors within each district for the purpose of the proposed amendments for fiscal year 1997-98 is based on the action taken by the Board on November 21, 1996, to designate areas of the state as nonattainment for certain pollutants (Reference: Sections 60200-60209, Title 17, CCR). The identification of nonattainment pollutants and precursors within each district for the purpose of the proposed amendments for fiscal year 1998-99 will be based on the designations that are effective on July 1,1998 (Reference: Sections 60200-60209, Title 17, CCR). Precursors of nonattainment pollutants are identified in section 90801, Title 17, CCR.

Existing regulations authorize districts to recover their administrative costs of collecting the fees by adding to the fees, amounts sufficient to cover those costs. As provided in Health and Safety Code section 39612(e), this additional fee amount is not included in the total fees subject to the \$3,000,000 cap. The current regulations further require districts to transmit the fees provided for in the regulations to the ARB to be forwarded to the State Controller for deposit in the Air Pollution Control Fund. The staff is not proposing any changes to these provisions.

#### II. <u>RECOMMENDATION</u>

To provide funding authorized by AB 1583, the staff recommends that the Board adopt the proposed fee regulations to provide for the collection of fees for fiscal years 1997-98 and 1998-99, and in future years if the fee authority is extended. This would be effected by adopting new section 90800.8, and amending sections 90802 and 90803, Title 13, CCR, as contained in Attachment A.

#### III. RELATIONSHIP TO OTHER FEE PROGRAMS

This report discusses a proposal for assessing fees on large, nonvehicular sources pursuant to AB 1583 and possible future authorization to assess fees. In addition to the fees on nonvehicular sources, the Act provides the ARB with the authority to assess fees for the certification of motor vehicles and engines sold in the state. The motor vehicle fee program was the subject of separate regulations, adopted by the Board in 1989, providing for the collection of fees from motor vehicle manufacturers on an annual basis in an amount sufficient to cover additional costs of implementing the CCAA mandates relating to mobile sources (Reference: Health and Safety Code section 43019, Title 13, CCR, sections 1990-1992). The Board also assesses fees for facilities pursuant to AB 2588, the "Air Toxics Hot Spots Information and Assessment Act of 1987."

#### IV. DISCUSSION OF PROPOSED REGULATIONS

#### A. OVERVIEW OF MAJOR ELEMENTS

The proposed amendments would establish a mechanism under which the ARB Executive Officer would identify the fees to be assessed and transmitted by each district in fiscal years 1997-98 and 1998-99, and in any subsequent fiscal year in which the ARB is authorized by state law to require such fees. The mechanism would eliminate the need for future annual rulemakings, while assuring that the districts and affected sources have the opportunity to provide input on the size of the assessments. Because of the limited time remaining in fiscal year 1997-98, the proposed amendments establish an abbreviated mechanism for the first year and districts would be required to transmit the collected fees to the ARB by June 15, 1998. After fiscal year 1998-99, there would be no fees assessed unless authorized by future legislation.

The provisions of the district fee regulations that have been generally applicable will continue in effect. The list of air contaminants that can constitute nonattainment pollutants and precursors would remain intact, as would the principle that a district's nonattainment status for each pollutant or precursor in a given fiscal year would be based on whether the district is designated nonattainment in ARB regulations as of July 1 of the fiscal year. Districts will continue to be permitted to collect additional fee amounts to cover their administrative costs in collecting the fees, including additional late fees. There would also continue to be a mechanism under which districts may be relieved, for good cause, of the obligation to remit the fees to the ARB.

#### B. THE FEE MECHANISM FOR FISCAL YEAR 1997-98

The overall formula proposed for assessing fiscal year 1997-98 fees is the same as the formula proposed for subsequent fiscal years, but the timetable for notifying the districts and transmittal of the fees to the ARB is different.

The staff is proposing that fees be based on emissions for the most recent calendar year for which emission estimates for all affected districts are available. For the first year, fiscal year 1997-98, the fees would be based on emissions in 1995, since these data are now available. The districts have been asked to verify emissions from affected facilities, and the staff has already received the requested emissions data from all districts containing these facilities.

The fees would be allocated among the affected districts and facilities on an equal dollars per ton of emissions basis throughout the state, as has been the case in the past. The total tons of emissions for each facility would consist of the total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more. Thus if a source has emitted 400 tons of one nonattainment precursor and 600 tons of another nonattainment precursor in the pertinent year, the fee assessment for the facility will be based on total emissions of 600 tons. This is also consistent with the approach used in the past. As has previously been

the case, a facility will be exempt if its emissions would otherwise be included solely because the facility is in a district which is designated nonattainment for the state ambient air quality standard for ozone solely as a result of ozone transport.

Once all of the facilities that emit 500 tons per year of nonattainment pollutants or nonattainment precursors are identified, the emissions from all of these facilities are added together to get the total number of tons of emissions subject to the CCAA fees. The dollars needed is divided by the number of tons of nonattainment pollutants and nonattainment precursors subject to the proposed regulation to obtain the dollar per ton fee rate for that particular year.

The dollars needed consist of the revenues needed to recover the costs of additional ARB programs related to nonvehicular sources for the fiscal year, not to exceed the amount authorized by state law for any fiscal year, and for the 1997-98 and 1998-99 fiscal years not to exceed \$3,000,000. This amount is adjusted by two adjustments described in the following paragraphs.

The first adjustment is an increase of up to three percent to cover shortfalls in revenues from the CCAA fees resulting from undercollection of funds. Previous experience with the CCAA fee program has shown that it is not always possible for districts to collect the full amount of the fees because of factors such as facility closure or emission estimation errors. The Board has approved adjustments in earlier years of the CCAA fee program because the Board was concerned that a shortfall in funds would seriously disrupt the programs that had been entrusted to the ARB to implement. The adjustment of up to three percent proposed by staff is based on previous experience with the CCAA fee program, and is much smaller than the ten percent adjustment applied in the early years of the CCAA fee program.

The second adjustment is a decrease to offset any excess fees collected in prior years. Any excess funds collected are to be carried over and applied to reduce fees in future years. For fiscal year 1997-98, there are no funds carried forward from previous years. For fiscal years subsequent to 1997-98, any excess funds carried over from the previous year will be carried over to reduce fees in future years. Regardless of the adjustments described above, the net fees accruing to the ARB will still be capped at \$3,000,000 per year for fiscal years 1997-98 and 1998-99, and by any limits set in future legislation authorizing fee assessments.

The following formulas would be used to calculate the fees mandated and dollar amounts to be transmitted to the Board:

(1) Fee per ton = 
$$\frac{R + A - C}{E}$$

Where

- R = Revenues needed by the ARB in the specified fiscal year for implementing various provisions of the CCAA and AB 1583 related to nonvehicular sources (not to exceed amount authorized by state law, which is three million dollars for fiscal years 1997-98 and 1998-99);
- A = An adjustment to cover unforeseen reductions in collections such as would occur from bankruptcies or unanticipated closings of businesses, not to exceed three percent of R (dollars);
- C = Carry-over excess revenues collected in prior fiscal years (dollars); and
- E = The total tons of nonattainment pollutants and precursors individually emitted in annual amounts of 500 tons or more from all permitted facilities in the state.
- (2) Dollar amount to be transmitted from a district to the ARB = F \* D

Where

- F = Fee per ton as calculated under above formula; and
- D = The total tons of nonattainment pollutants and precursors individually emitted in annual amounts of 500 tons or more from all permitted facilities in the district during the specified year (tons).

The staff's preliminary estimates of the fiscal year 1997-98 fees are referenced in the following section. Staff intends to provide by the scheduled January 29, 1998 hearing date any revisions to these preliminary figures. Under the proposed regulation, the Executive Officer is to notify the districts of the final fiscal year 1997-98 assessments for each district within 15 days after the regulation becomes operative. These assessments will reflect the Executive Officer's determinations as of January 29, except for any modifications necessitated by subsequently received information described in the final notification. This approach will assure that interested parties are as informed as possible of the final assessments by the date of the Board hearing.

In order to assess fees equitably for all permitted facilities which emitted 500 tons or more per year of any nonattainment pollutants or nonattainment precursors, districts would also have to transmit fees for any facility that meets the fee criteria but is not identified until after the districts have received notified of the final fee allocations (section 90800.8(c), Title 17, CCR). A similar provision was adopted by the Board for the previous seven years of the program.

#### C. ESTIMATED FEES FOR FISCAL YEAR 1997-98

Based on currently available information, the staff anticipates that the fee rate formula will apply for fiscal year 1997-98 as follows:

R = \$3,000,000 program costs for fiscal year 1997-98, since the ARB's overall nonvehicular source program costs significantly exceed \$3,000,000;

A = \$90,000 adjustment (3 percent of \$3,000,000);

C = \$0 (zero), since no revenues were carried over from previous years because of the expectation that the 1996-97 fiscal year would be the last year of the CCAA fee program; and

E = 129,027 tons, representing the statewide emissions in the 1995 calendar year subject to the fees.

Fee rate (\$/ton) = 
$$\frac{(\$3,000,000 + \$90,000 - \$0)}{129,027 \text{ tons}} = \$23.95 \text{ per ton.}$$

Attachment E shows the staff's preliminary estimate of the total nonattainment emissions subject to the fee regulations in each district and statewide. The attachment also shows the preliminary estimate of the assessments for each of the 10 districts and 60 sources now expected to be subject to the fee requirements in fiscal year 1997-98.

Since the first year of the CCAA fee program in 1989, the number of facilities subject to the CCAA fees has declined from 116 to 60 and the amount of emissions subject to the fees has decreased from a high of 259,900 tons to approximately 129,000 tons this year. The bulk of the decline has been due to the installation of improved emission controls or the development of improved emission estimation methods. As a result, the fee rate has increased from approximately \$13 per ton to the approximately \$24 per ton projected for this year. About one half of the increase, approximately \$5 per ton, occurred between the fees for this fiscal year, FY97/98, and the fees for the previous year, FY96/97. This large year-to-year increase is due to the following reasons: (1) there were large emission reductions due to updated emission estimates for power plants and refineries; (2) a number of facilities reduced their emissions below the 500 ton per year threshold and dropped out of the program; (3) there are no carry-over funds from previous years;

and (4) because all reserve funds were used to reduce the fees for fiscal year 1996-97, a new reserve had to be established for this year.

## D. THE FEE MECHANISM FOR FISCAL YEAR 1998-99 AND SUBSEQUENT YEARS

For fiscal year 1998-99 and any subsequent year in which the ARB is authorized by state law to require CCAA nonvehicular source fees, the proposed amendments require each district to provide certain information to the ARB on affected facilities in the district by April 1 of the preceding fiscal year. The districts would need to submit the name and address of each permitted facility that emitted 500 tons or more of any nonattainment pollutant or precursor during the most recent calendar year for which emission estimates are available for all affected districts. They would also identify the total tons of each facility's emissions during that year of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 500 tons or more in the year. This information is necessary to enable the ARB Executive Officer to make accurate fee determinations in a timely manner.

The proposed regulation requires the Executive Officer to notify all districts and affected sources of the preliminary determinations on the fees to be assessed and the information on which the fees are based, by May 1 of the preceding fiscal year. These determinations will be based on the formula described in subsection C above. The districts and affected sources will be given the opportunity to provide additional information that may change the preliminary determinations of emissions and fees. After considering any comments, the Executive Officer would by July 1 provide written notice of the final determinations. The districts would proceed to assess and collect the fees, and would transmit the specified dollar amount by January 1 of the fiscal year.

## E. OTHER ELEMENTS OF THE FEE REGULATIONS THAT WILL REMAIN APPLICABLE

#### 1. Definitions of Nonattainment Pollutants and Precursors

For purposes of the fee regulations, a "nonattainment pollutant" is any pollutant emitted in an area which is designated as nonattainment for that pollutant by sections 60200-60209, Title 17, CCR, for a state ambient air quality standard identified in section 70200, Title 17, CCR. A "nonattainment precursor" is any substance emitted in a nonattainment area known to react in the atmosphere that contributes to the production of a nonattainment pollutant or pollutants. Because area designations may change from year to year, in 1991 the Board amended the fee regulations to clarify which designations apply in each fiscal year. This is discussed further in subsection 2 below.

A list of nonattainment pollutants and nonattainment precursors is provided in Table 1. Facilities in areas which are designated nonattainment for one or more of the substances listed in

#### Table 1

#### NONATTAINMENT POLLUTANTS AND NONATTAINMENT PRECURSORS

<u>Substance</u>

(as listed in section 70200 | Nonattainment

Title 17, CCR): Pollutant/Precursors:

Ozone reactive organic gases

oxides of nitrogen

Sulfur Dioxide oxides of sulfur

Sulfates oxides of sulfur

Nitrogen Dioxide oxides of nitrogen

Carbon Monoxide carbon monoxide

Suspended Particulate suspended particulate matter (PM10)

Matter (PM10) oxides of nitrogen

oxides of sulfur

reactive organic gases

Visibility Reducing suspended particulate matter (PM10)

Particles oxides of nitrogen

oxides of sulfur

reactive organic gases

Hydrogen Sulfide hydrogen sulfide

Lead lead

(Reference: section 90801(d), Title 17, CCR)

Table 1 may be subject to fees based on the amount of the pollutant or its precursor that is emitted.

Fees are currently collected for emissions of only six of the nine substances for which state ambient air quality standards exist. Fees are not assessed for emissions of visibility reducing particles, hydrogen sulfide, and lead for the following reasons. In 1989 the Board adopted a new monitoring method for visibility reducing particles, but data are not yet available for most areas on which to base area designations. Consequently, all areas remain unclassified for this substance except Lake County, which has been designated as attainment. Hydrogen sulfide is not included in the fee process because there are no sources emitting 500 tons or more per year of that pollutant in the two nonattainment areas of the state. Finally, all areas of the state are currently designated attainment for lead; therefore, no fees have been assessed for this pollutant.

#### 2. The Effect of Redesignations

The nonattainment designations used to determine whether an area is subject to the fees is based on the nonattainment designation in effect the first day of the fiscal year (section 90801(b) and (c)). For fiscal year 1997-98, those designations effective on July 1, 1997, will be used. For fiscal year 1998-99, those designations effective on July 1, 1998, will be used. The Board approved revisions to nonattainment designations at the November 13, 1997, Board hearing. These designations would not result in any change in the facilities subject to the CCAA nonvehicular source fees for FY 1998-99.

#### 3. Recovery of Districts' Administrative Costs

The staff is not proposing changes to the portion of the regulations, adopted in 1989 and continued through 1996, which provide for recovery of districts' administrative costs [section 90802(d)]. The regulations provide for collection by districts of additional fee amounts to cover their administrative costs for collecting the fees. Districts' costs are in addition to the fees mandated by this proposal, and are expected to add no more than 5 percent based on past experience. The regulations [section 90802(b)] require districts to substantiate the administrative costs and to provide supporting information to the ARB upon request. The information must be provided within 30 days of the request. The 30-day period provides the districts with sufficient time to compile and submit the requested data. These requirements allow the ARB to ensure that the fee collection program is effectively implemented and that funds necessary to implement the requirements of the Act are available to the ARB. The regulations [section 90802 (b)] also require districts to impose late fees on facilities that do not submit assessed fees in a timely manner to cover the additional administrative costs the districts incur in collecting late fees.

#### 4. <u>Impact on District of Failure of Facilities to Pay Fees</u>

The regulations adopted between 1989 and 1996 also provide a mechanism that releases a district from the responsibility for remitting fees that are, for demonstrated good cause, not collectible. As in the past, a district must still demonstrate good cause before relief from fees may

be granted. Section 90803 identified emission quantification errors as one of the possible bases for a district to be relieved from a portion of the fees. Examples of other situations for which these provisions would apply include such events as facility closure or refusal of the facility operator to pay the fees despite reasonable efforts by the district to collect the fees.

#### V. <u>POTENTIAL IMPACTS AND ISSUES</u>

#### A. POTENTIAL ENVIRONMENTAL IMPACTS

The staff is not aware of any potential adverse impacts on the environment that would be attributable to the implementation of proposed revisions to the fee program. Resources obtained through this fee program will fund tasks which are expected to contribute to or result in improved air quality.

#### B. POTENTIAL ECONOMIC IMPACTS

#### 1. <u>Public Agencies</u>

Local agencies will incur some costs as a result of the proposed regulations, in that air pollution control and air quality management districts will incur administrative costs in collecting the fees. Health and Safety Code section 39612 and section 90802(d), title 17, CCR, authorize the districts to recover these administrative costs from facilities subject to the fees. In administering the program for FY 1996-1997, most but not all districts assessed additional fees to cover their administrative costs. Applying the FY 1996-1997 district fee rates to the expected state fee assessments for FY 1997-1998 indicates that the districts will incur costs of approximately \$81,000 for which they will assess additional fees. The districts' administrative costs are not reimbursable state mandated costs because of the districts' authority to recover the costs through fee assessments.

No local or state agencies have been identified as operating facilities that would be subject to the nonvehicular source permit fees for fiscal year 1997-98. If any local agencies are required to pay permit fees in subsequent fiscal years, these costs would not be reimbursable state mandated costs pursuant to Government Code section 17500 et seq. because the fee regulations apply generally to all facilities in the state which emit 500 tons or more per year of nonattainment pollutants or their precursors and, therefore, do not impose unique requirements on local government agencies.

One federal agency has been identified that would be subject to the proposed fees: the Naval Petroleum Reserve, located in the San Joaquin Valley Air Basin portion of Kern County. The cost to this federal government agency in complying with the regulations will be approximately \$24,000. Federal facilities are required to comply with all state and local requirements relating to the control and abatement of air pollution to the same extent as private persons. (Clean Air Act 118, 42 U.S.C. section 4218.) This includes the payment of permit fees.

(<u>United States of America</u> v. <u>South Coast Air Quality Management District</u> (1990) 748 F.Supp. 732; <u>State of Maine</u> v. <u>Department of the Navy</u> (1988) 702 F.Supp. 322.)

#### 2. BUSINESSES

The proposed regulations would require the collection of fees from specified facilities based on the facilities' emissions. The fee per facility for fiscal year 1997-98 and 1998-99 will be determined based on the amount of these pollutants emitted in 1995 and 1996, respectively. The cost to affected businesses will therefore vary according to the magnitude of facilities' emissions. The cost to an individual business is estimated to range from a minimum of approximately \$15,000 to a maximum of approximately \$515,000 for a business that owns and operates multiple facilities in the State.

The staff believes that the adoption of the fee program will not have a significant adverse economic impact on businesses subject to the fees. The affected industries are among the largest in the state, both in size and financial strength. A detailed analysis of the economic impact of the proposed regulations on businesses is included in Attachment D: California Business Impacts of Permit Fee Regulations for Nonvehicular Sources.

The staff believes that adoption of these regulations will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. In FY 1997-1998, approximately 60 facilities in the state are expected to be assessed permit fees under the proposed regulations. Among the operators of these facilities are major oil and gas producers, utilities, and major manufacturing enterprises. It is estimated that the average return on owners' equity for all affected businesses for which financial data are available would have declined by only about 0.02 percent in 1996.

The staff believes that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. The regulations will not affect any small businesses because no major nonvehicular sources subject to the regulations are considered to be small businesses.

# Attachment A Proposed Fee Regulation

#### PROPOSED REGULATION ORDER

#### Amendments to the California Clean Air Act Nonvehicular Source Fee Regulations

**Note:** The amendments are shown in *italics* to indicate additions and <del>strikeout</del> to show deletions. Subsection headings shown in bold are to be printed in italics.

Adopt or amend sections 90800.8 through 90803, title 17, California Code of Regulations, to read as follows (section 90802 is shown for completeness; no amendments are proposed):

§ 90800.8. Fee Requirements for the 1997-1998 and Subsequent Fiscal Years

- (a) Applicability.
  - (1) 1997-1998 Fiscal Year.
    - (A) Notification to Districts. No later than 15 days after the operative date of this section, the executive officer shall provide written notice to each district of his/her 1997-1998 fiscal year determinations, as of January 29, 1998, for all of the items in section (c)(1) through (c)(6). The written notices may reflect modifications to the determinations based on information received by the executive officer after January 29, 1998, in which case the notices shall include a brief explanation of the modifications.
    - (B) Collection and Transmittal of the Fees to the State Board. Each district that is notified that it must remit a specified dollar amount to the state board for the 1997-1998 fiscal year shall transmit that dollar amount to the state board by June 15, 1998, for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected by the district from the facilities in the district that are identified in the executive officer's notification as meeting the criteria in section (c)(4). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.
  - (2) 1998-1999 and Subsequent Fiscal Years. Sections (b) through (e) apply for the 1998-1999 fiscal year and for any subsequent fiscal year in which the state board is authorized by state law to require districts to impose additional permit fees on nonvehicular sources within their jurisdiction, to be expended by the state board for the purposes of recovering costs of additional state programs related to nonvehicular sources.

45-Day Notice proposed amendments Date of Release: December 12, 1997 Board Hearing: January 29, 1998

- (b) Submittal of Information by Districts. No later than April 1 of the preceding fiscal year, each district shall submit all of the information identified in section (c)(4) to the executive officer in writing.
- (c) **Preliminary Determination of Fees to be Assessed.** No later than May 1 of the preceding fiscal year, the executive officer shall make preliminary determinations of all of the items in section (c)(1) through (c)(6), and shall provide written notice of the determinations to each district and to each facility identified in accordance with section (c)(4). The notice shall state that written comments regarding the preliminary designations received by the executive officer by June 1 of the preceding fiscal year will be considered by the executive officer in reaching final determinations.
  - (1) **Needed Revenues.** The revenues needed to recover the costs of the state board for additional state programs related to nonvehicular sources in the fiscal year. The revenues shall not exceed the amount authorized by state law for any fiscal year, and for the 1997-1998 and 1998-1999 fiscal years shall not exceed \$3,000,000 per fiscal year.
  - (2) Adjustment Amount. An additional adjustment amount, not to exceed 3 percent of the needed revenues, designed to recover unforseen reductions in collections due to unexpected business closures and bankruptcies.
  - (3) Carry-over Revenues. The amount of revenues collected in the previous fiscal year in excess of the needed revenues for that fiscal year.
  - (4) Emissions of Facilities Subject to Fees. For each district, (i) the name and address of each permitted facility that emitted 500 tons or more of any nonattainment pollutant or precursor during the most recent calendar year for which emission estimates are available for all affected districts, and (ii) the total tons of each identified facility's emissions during the referenced calendar year of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 500 tons or more in the year. A facility shall not be included if its emissions would otherwise be included solely because the facility is in a district which is designated in section 60201 as not having attained the state ambient air quality standard for ozone solely as a result of ozone transport identified in section 70500, title 17, California Code of Regulations.

(5) **Fee per ton.** The fee per ton for the fiscal year, calculated in accordance with the following formula:

Fee per ton = 
$$\frac{R + A - C}{E}$$

Where

R = The needed revenues identified in accordance with section (c)(1)

A = The adjustment amount identified in accordance with section (c)(2)

C = Carry-over revenues determined in accordance with section (c)(3)

E = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more from all permitted facilities in the state identified in accordance with section (c)(4)

(6) **Amount to be Remitted From Each District.** For each district, the dollar amount to be transmitted to the state board, calculated in accordance with the following formula:

Amount to be transmitted = F \* D

Where

F = Fee per ton as calculated in accordance with section (c)(5); and

- D = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more from all permitted facilities in the district identified in accordance with section <math>(c)(4)
- (d) **Final Determination of Fees to be Assessed.** No later than July 1 of the fiscal year, after considering any comments submitted by June 1 of the preceding fiscal year, the executive officer shall make final determinations of all of the items in section (c)(1) through (c)(6), and shall provide written notice of the determinations to each district and to each facility identified in accordance with section (c)(4).
- (e) Collection and Transmittal of the Fees to the State Board.
  - (1) Each district that is notified pursuant to section (d) that it must remit a specified dollar amount to the state board shall transmit that dollar amount to the state board by January 1 of the fiscal year, for deposit into the Air Pollution Control Fund. The amount

transmitted shall be collected by the district from the facilities in the district that are identified in the executive officer's final determination as meeting the criteria in section (c)(4). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(2) In addition to the amount transmitted in accordance with section (e)(1), a district shall, for any facility identified by the executive officer as meeting the criteria in section (c)(4) after the executive officer's notification under (d), transmit to the state board for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section (c)(5) multiplied by the total tons of the facility's emissions, during the calendar year used to determine emissions in accordance with section (c)(4), of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 500 tons or more in the year. The amount transmitted shall be collected by the district from the newly identified facility, and shall be in addition to permit and other fees already authorized to be collected from the facility.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

#### § 90801. Definitions.

- (a) "Facility" means any nonvehicular source which requires a permit from the district.
- (b) "Nonattainment pollutant" means any substance for which an area is designated in sections 60200-60209 as not having attained a state ambient air quality standard listed in section 70200, Title 17, California Code of Regulations, as of July 1 of the fiscal year for which fees are being collected.
- (c) "Nonattainment precursor" means any substance which reacts in the atmosphere to contribute to the production of a nonattainment pollutant or pollutants in an area designated in sections 60200-60209 as not having attained a state ambient air quality standard listed in section 70200, Title 17, California Code of Regulations, as of July 1 of the fiscal year for which fees are being collected.
- (d) For the purposes of this subchapter, "nonattainment pollutants and precursor" shall be defined as follows:

Substance

Sulfur Dioxide

(as listed in section 70200, Title 17, nonattainment CCR): nonattainment pollutant/precursor:

Ozone reactive organic gases

oxides of nitrogen oxides of sulfur oxides of sulfur oxides of nitrogen

Sulfates oxides of sulfur
Nitrogen Dioxide oxides of nitrogen
Carbon Monoxide carbon monoxide
Suspended Particulate suspended particulate
Matter (PM<sup>10</sup>) matter (PM<sup>10</sup>),

matter (PM<sup>10</sup>), oxides of nitrogen, oxides of sulfur

reactive organic gases

Visibility Reducing suspended particulate matter (PM<sup>10</sup>),

Particles oxides of nitrogen, oxides of sulfur

reactive organic gases

Hydrogen Sulfide hydrogen sulfide

Lead lead

(e) "Operator" means the person who owns or operates a facility or part of a facility.

(f) "District" means an air pollution control district or an air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

#### § 90802. Fee Payment and Collection.

- (a) Each district shall notify and assess the operator of each facility subject to permit fees, as provided for in these regulations, in writing of the fee due. The fee shall be past due 60 days after receipt by the operator of the fee assessment notice.
- (b) Each district shall assess an additional fee on operators failing to pay the fee within 60 days of receipt of the fee assessment notice. The district shall set the late fee in an amount sufficient to pay the district's additional expenses incurred by the operator's untimely payment.

- (c) Any fees submitted to the state which exceed costs to the state of additional state programs authorized or required by the California Clean Air Act of 1988, related to nonvehicular sources shall be carried over by the state for expenditure for these purposes.
- (d) Each district may recover administrative costs to the district of collecting the fees pursuant to these regulations. At the request of the State Board, a district shall provide to the State Board, within 30 days of the request, substantiation of administrative costs.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

#### § 90803. Failure of Facility to Pay Fees.

In the event any district is unable to collect the assessed fee from any source due to circumstances beyond the control of the district, including but not limited to facility closure, emission quantification errors, or refusal of the operator to pay despite permit revocation and/or other enforcement action, such district shall notify the Executive Officer of the State Board. For demonstrated good cause, the district may be relieved from that portion of the fees the district is required to collect and remit to the state as set forth in section 90800 or section 90800.1 or section 90800.2 or section 90800.3 or section 90800.4 or section 90800.5 or section 90800.6 or section 90800.7 or section 90800.8. Nothing herein shall relieve the operator from any obligation to pay any fees assessed pursuant to these regulations.

NOTE: Authority cited: Sections 39600, 39601 and 39612, Health and Safety Code. Reference: Sections 39002, 39500, 39600 and 39612, Health and Safety Code.

#### Attachment B

Section 39612 of the Health and Safety Code

#### Section 39612 of the Health and Safety Code

- 39612. (a) In addition to funds that may be appropriated by the Legislature to the state board to carry out the additional responsibilities and to undertake necessary technical studies required by this chapter, the state board, beginning July 1, 1989, may require districts to impose additional permit fees on nonvehicular sources within their jurisdiction.
- (b) The permit fees imposed pursuant to this section shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources. Priority for expenditure of permit fees collected pursuant to this section shall be given to all of the following activities:
- (1) Identifying air quality-related indicators that may be used to measure or estimate progress in the attainment of state ambient air standards pursuant to subdivision (f) of Section 39607.
- (2) Establishing a uniform methodology for assessing population exposure to air pollutants pursuant to subdivision (g) of Section 39607.
- (3) Updating the emission inventory pursuant to Section 39607.3, including emissions that cause or contribute to the nonattainment of federal ambient air standards.
- (4) Identifying, assessing, and establishing the mitigation requirements for the effects of interbasin transport of air pollutants pursuant to Section 39610.
- (5) Updating the state board's guidance to districts on ranking control measures for stationary sources based upon the cost effectiveness of those measures in reducing air pollution.
- (c) The permit fees imposed pursuant to this section shall be collected from nonvehicular sources that are authorized by district permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors.
- (d) The permit fees collected by a district pursuant to this section, after deducting the administrative costs to the district of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.
- (e) The total amount of funds collected by fees imposed pursuant to this section, exclusive of district administrative costs, shall not exceed three million dollars (\$3,000,000) in any fiscal year.
- (f) On or before January 1 of each year, the state board shall report to the Governor and the Legislature on the expenditure of permit fees collected pursuant to this section. The report shall include all of the following:
- (1) For the initial report prepared for the 1997-98 fiscal year, a detailed workplan that describes the expenditures the state board will make from permit fees collected pursuant to this section for that fiscal year.
- (2) A report on the status of implementation of the programs prioritized for funding pursuant to subdivision (b).
- (g) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

# Attachment C Notice of Consultation Meeting



California Environmental Protection Agency



Air Resources Board

P.O. Box 2815 2020 L Street Sacramento, CA 95812-2815 http://www.arb.ca.gov



Secretary for Environmental Protection

October 30, 1997

## Public Consultation Meeting: California Clean Air Act Nonvehicular Source Fee Regulations

#### Dear Sir/Madam:

The staff of the Air Resources Board (ARB) will be holding a public consultation meeting concerning regulations which are being proposed to implement nonvehicular source fee provisions of the California Clean Air Act (CCAA). The CCAA fees are used to partially offset the costs of implementing the requirements of the CCAA related to nonvehicular sources. The original authorization to assess fees in the CCAA expired on July 1, 1997. Assembly Bill 1583 (Stats. 1997, ch. 713) reinstates and extends the authority to assess fees for an additional two years.

The extension of the fee provisions of the CCAA gives the ARB the authority to require air pollution control and air quality management districts to collect additional permit fees from nonvehicular sources within their jurisdictions. The proposed regulations are similar to those previously approved for the CCAA fees with two exceptions. First, the regulation being proposed will cover both fiscal years 1997-98 and 1998-99. Second, the fee regulation will contain the formula used for calculating the fees rather than the dollar amount to be collected by each district.

The amendments we will propose will be based on our best estimate of emissions from facilities subject to the fees. The fees for fiscal year 1997-98 and fiscal year 1998-99 will be based on emissions during calendar years 1995 and 1996, respectively. It is crucial that both districts and affected sources make every effort to ensure that the emission data to be used for the fee regulations are as accurate as possible.

District staff and representatives from facilities that have been identified as being potentially subject to the proposed regulations are invited to participate in the meeting.

The public consultation meeting will be held at the time and place listed below:

Date: December 10, 1997

Time: 10:00 a.m.

Place: Air Resources Board

2nd Floor Conference Room

2020 L Street

Sacramento, California

This meeting will be conducted by the staff of the ARB's Technical Support Division. Comments received at the consultation meeting will be used to assist the ARB staff in preparing the proposal for consideration by the ARB. The proposal is scheduled for consideration at the ARB's January 1998 meeting.

If you have any questions, please contact Don Rake at (916) 322-7304 or Cheryl Taylor at (916) 324-7168.

Sincerely,

Linda C. Murchison, Chief Emission Inventory Branch Technical Support Division

cc: Don Rake, TSD Cheryl Taylor, TSD

#### **Attachment D**

## California Business Impacts of Permit Fee Regulations for Nonvehicular Sources

#### CALIFORNIA BUSINESS IMPACTS OF PERMIT FEE REGULATIONS FOR NONVEHICULAR SOURCES

#### **Introduction**

This section evaluates the potential economic impact of permit fee regulations for nonvehicular sources on business enterprises in California pursuant to the California Clean Air Act (CCAA). Section 11346.3 of the Government Code requires that, in proposing to adopt or amend any administrative regulation, state agencies shall assess the potential for adverse economic impact on California business enterprises and individuals. The assessment shall include a consideration of the impact of the proposed or amended regulation on the ability of California businesses to compete with businesses in other states, the impact on California jobs, and the impact on California business expansion, elimination, or creation.

This analysis is based on a comparison of the annual return on owner's equity (ROE) for affected businesses before and after the inclusion of the fees. The analysis also uses publicly available information to assess the impacts on competitiveness, jobs, and business expansion, elimination, or creation. The purpose of this analysis is to indicate whether or not the annual permit fee would have significant adverse impacts on California businesses and individuals.

#### Affected Businesses

All permitted facilities which are located in nonattainment areas and identified as having emitted 500 tons or more per year of any nonattainment pollutant or its precursors in 1995 are affected by the CCAA nonvehicular source fees. The affected businesses fall into different industry classifications. A list of these industries which we have been able to identify is provided in Table 1.

#### Study Approach

The approach used in evaluating the potential economic impact of the proposed annual permit fee on California businesses is as follows:

- (1) All affected facilities are identified from responses to the ARB's 1995 emission inventory list. Standard Industrial Classification (SIC) codes reported by these businesses are listed in Table 1.
- (2) Annual permit fees for the CCAA program are estimated for each of these facilities based on the fee rates adopted by the Board for the fiscal year 1996-97. Total fees are calculated for the program for each business. A business might own several facilities.

Table 1
List of Industries with Affected Businesses

SIC CODE	INDUSTRY
1311	Crude Petroleum and Natural Gas
1321	Natural Gas Liquids
1474	Potash, Soda, and Borate Minerals
2721	Periodicals: Publishing, or Publishing and Printing
2812	Alkalies and Chlorine
2819	Industrial Inorganic Chemicals, Not Elsewhere Classified
2833	Medicinal Chemicals and Botanical Products
2911	Petroleum Refining
2999	Products of Petroleum and Coal, Not Elsewhere Classified
3211	Flat Glass
3221	Glass Containers
3241	Cement, Hydraulic
3273	Ready-mixed Concrete
3711	Motor Vehicles and Passenger Car Bodies
4911	Electric Services
4922	Natural Gas Transmission
4923	Gas Transmission and Distribution
4931	Electric and Other Services Combined

- (3) The total annual permit fee for each business is adjusted for both federal and state taxes.
- (4) These adjusted fees are subtracted from net profit data and the results used to calculate the Return on Owners' Equity (ROE). The resulting ROE is then compared with the ROE before the subtraction of the adjusted fees to determine the impact on the profitability of the businesses. A reduction of more than 10 percent in profitability is considered to indicate a potential for significant adverse economic impacts. This threshold is consistent with the thresholds used by the U.S. EPA and others.

#### **Assumptions**

Financial data for 1996 were available for only 21 of the estimated 36 affected businesses. Using these financial data, the ROEs before and after the subtraction of the adjusted fees were calculated for those 21 businesses. These calculations were based on the following assumptions.

- (1) All affected businesses are subject to federal and state tax rates of 35 percent and 9.3 percent, respectively.
- (2) Affected businesses neither increase the prices of their products nor lower their costs of doing business through cost-cutting measures because of the fee regulations.

These assumptions, though reasonable, might not be applicable to all affected businesses.

#### Potential Impact On Business

California businesses are affected by the proposed annual fee regulations to the extent that the implementation of the proposed fees reduces their profitability. Using ROE to measure profitability, we found that the average ROE for all affected businesses for which financial data were available would have declined by about 0.02 percent in 1996. This represents a minuscule decline in the average profitability of the affected businesses. Assuming the fees continue in future years, their impact on business profitability is expected to be of the same magnitude.

All businesses, however, would not be affected equally by the proposed fee regulations. For the 21 businesses for which financial data were available, the change in profitability ranged from almost zero to a high of less than 0.2 percent. This variation in the impact of the fee regulations can be attributed mainly to two factors. First, some businesses are subject to higher fees than others due to the type of industry in which they are involved, the number of facilities

which they operate, and the type and number of their devices and emitting processes. For example, for the proposed CCAA fees for fiscal year 1997-98, the estimated annual fees for businesses in the industries listed in Table 1 range from a high of about \$500,000 to a low of about \$15,000. Second, the performance of businesses may vary from year to year. Hence, the 1996 financial data used may not be representative of a typical-year performance for some businesses.

The potential impacts estimated here might be high for the following reasons. First, the annual permit fees are not new to affected businesses. The impact of the fee as estimated here tends to be more severe than what it would be if we had used the incremental changes in fees rather than the total fees. Second, affected businesses probably would not absorb all of the increase in their costs of doing business. They would be able to either pass some of the cost on to consumers in the form of higher prices, reduce their costs, or both.

#### Potential Impact on Consumers

No noticeable change in consumer prices is expected from the proposed CCAA fees for fiscal year 1997-98. This is because the proposed fees would have only a minuscule impact on the profitability of affected businesses. The impact would have been less if we had used the incremental change in annual fees rather than the total annual fees in this analysis.

#### Potential Impact on Employment

Since the proposed fees impose no noticeable cost squeeze on businesses, we expect no significant change in employment due to the imposition of the fees. However, the CCAA fees may impose hardship on some businesses operating with little or no margin of profitability, affecting the creation of jobs in California.

#### <u>Impact on Business Creation, Elimination, or Expansion</u>

No change is expected to occur in the status of California businesses as a result of the proposed CCAA fees. This is because the fees have no significant impact on the profitability of businesses in California. However, should the CCAA fees impose hardship on California businesses operating with little or no margin of profitability, some affected businesses may decide not to expand in California.

#### <u>Impact on Business Competitiveness</u>

The proposed CCAA fees would have no material impact on the ability of California businesses to compete with businesses in other states. This is because the proposed CCAA fees do not impose a noticeable cost squeeze on California businesses. In addition, most affected businesses are local and are not subject to competition from businesses in other states.

#### Conclusion

Overall, all affected facilities are owned and operated by large businesses. These businesses would appear to be able to absorb the costs of the proposed annual fee regulations without a significant adverse impact on their profitability. Although some businesses would potentially experience a greater reduction in their profitability than others, the impact of the proposed fee regulations appears to be minuscule. Assuming the fees continue in future years, the expected impact would be of the same magnitude.

Since the proposed fees impose no noticeable cost squeeze on businesses, we expect no significant change in employment; business creation, elimination, or expansion; and business competitiveness.

# Attachment E

Preliminary Estimate of 1995 Emissions and Fees for Fiscal Year 1997-98

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Bay Area								
Day Aica								
Alamed	a County							
	Owens-Brockway Glass Container	Co.						
	Facility ID 30							
	Oakland		860				860	\$20,597
	New United Motor Manufacturing							
	Facility ID 1438							
	Fremont	937					937	\$22,441
Contra	Costa County							
	Chevron Inc.							
	Facility ID 10							
	Richmond	2902	3615	1019			7536	\$180,487
	Shell Martinez Refining Company							
	Facility ID 11							
	Martinez	1680	4447	2511			8638	\$206,880
	Pacific Gas and Electric							
	Facility ID 12							
	Pittsburg		1921				1921	\$46,008
	Tosco Corp., Avon Refinery							
	Facility ID 13							
	Martinez	2271	2643	4463			9377	\$224,579
	Tosco Rodeo Refinery							
	Facility ID 16							
	Rodeo	673	1663	728			3064	\$73,383
	Pacific Gas and Electric							
	Facility ID 18							
	Antioch		839				839	\$20,094

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
	Union Chemicals							
	Facility ID 22							
	Rodeo		565	1535			2100	\$50,295
	Rodeo		303	1333			2100	ψ30,293
	Dow Chemical Co.							
	Facility ID 31							
	Pittsburg		790				790	\$18,921
San Fra	ncisco County							
	Desific Cos & Floatric Fyons Ave							
	Pacific Gas & Electric, Evans Ave. Facility ID 24	Г						
			734				704	<b>047 570</b>
	San Francisco		734				734	\$17,579
	Pacific Gas & Electric, Illinois St.							
	Facility ID 26							
	San Francisco		646				646	\$15,472
Santa C	Clara County							
	Kaiser Cement Corporation							
	Facility ID 17							
	Cupertino		1694				1694	\$40,571
	Quebecor Printing							
	Facility ID 207							
	San Jose	755					755	\$18,082
	San Jose	755					755	Φ10,002
Solano	County							
	Exxon Corporation							
	Facility ID 15							
	Benicia	730	2827	6086			9643	\$230,950
Total Bay Area	a	9948	23244	16342			49534	\$1,186,339

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Kern (Moja	ve Desert Air Basin)							
Kern	County							
	Cal Portland Cement Co.							
	Facility ID 9							
	Mojave		2246				2246	\$53,792
	Calaveras Cement Co.							
	Facility ID 20							
	Monolith		1562				1562	\$37,410
	National Cement Co.							
	Facility ID 21							
	Lebec		1760				1760	\$42,152
	U.S. Borax Inc.							
	Facility ID 28							
	Boron		606				606	\$14,514
I otal Kern	(Mojave Desert)		6174				6174	\$147,867

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Mojave Desert	t							
Riversid	le County							
KIVEISIO	le Gounty							
	Southern California Gas Company							
	Facility ID 3101437							
	Blythe		1587				1587	\$38,009
San Ber	rnardino County							
San Bei	County							
	Southdown, Inc.							
	Fac. ID 100005							
	Victorville		2978				2978	\$71,323
	North American Chemical							
	Fac. ID 900002							
	Trona		2159		535		2694	\$64,521
	Diverside Coment Company							
	Riverside Cement Company Fac. ID 1200003							
	Oro Grande		3795	527			4322	\$103,512
	Oro Grande		3/95	527			4322	\$103,512
	PG&E, Topock Compressor Station	<u> </u>						
	Fac. ID 1500039							
	Needles		653				653	\$15,639
	PG&E, Hinkley Compressor Station	n						
	Fac. ID 1500535							
	Hinkley		1920				1920	\$45,984
	Courth and California Court							
	Southern California Gas Company							
	Fac. ID 3100065 Newberry Springs		1091				1091	\$26,129
	remony opinigo		1001				1001	Ψ20,120
	Southern California Gas Company							
	Fac. ID 3100068							
	Needles		1361				1361	\$32,596

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
	Coolwater Generating Station							
	Facility ID 6900004							
	Daggett		847				847	\$20,286
	Mitsubishi Cement							
	Facility ID 11800001							
	Lucerne Valley		1466	946			2412	\$57,767
Total Moja	ve Desert		17857	1473	535		19865	\$475,767

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Monterey Bay								
Montere	y County							
	Pacific Gas and Electric							
	Facility ID 25							
	Moss Landing		4037				4037	\$96,686
Santa C	ruz County							
	RMC Lonestar Cement							
	Facility ID 11							
	Davenport		949				949	\$22,729
Total Monterey	/ Bay		4986				4986	\$119,415

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
San Diego								
	SDG&E Co., South Bay Plant							
	Facility ID 72							
	Chula Vista		1172				1172	\$28,069
	SDG&E Co., Encina Plant							
	Facility ID 73							
	Carlsbad		1124				1124	\$26,920
	Nutrasweet Kelco Co.							
	Facility ID 118							
	San Diego	1225					1225	\$29,339
Total San Di	ego	1225	2296				3521	\$84,328

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
San Joaqui	n Valley							
	,							
Fresr	no County							
	Guardian Industries Corp.							
	Facility ID 598							
	Kingsburg		1167	572			1739	\$41,649
	PPG Industries, Inc.							
	Facility ID 948							
	Fresno		906				906	\$21,699
Kern	County							
	Texaco Refining and Marketing							
	Facility ID 33							
	Bakersfield	804					804	\$19,256
	Kern River Cogeneration							
	Facility ID 88							
	Oildale		1265				1265	\$30,297
	Sycamore Cogeneration							
	Facility ID 511							
	Oildale		2113				2113	\$50,606
	ARCO Western Energy							
	Facility ID 1135							
	Kern County		1097				1097	\$26,273
	ARCO Western Energy							
	Facility ID 1136							
	Kern County		606				606	\$14,514
	AREA Energy LLC							
	Facility ID 1547							
	Western Kern County		1058				1058	\$25,339

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
	Vintage Petroleum, Inc.							
	Facility ID 1738							
	Kern County		619				619	\$14,825
	Naval Petroleum Reserve Gas	s Plants						
	Facility ID 2234							
	Elk Hills	950					950	\$22,753
San	Joaquin County							
	Libbey Owens Ford							
	Facility ID 477							
	Lathrop		716				716	\$17,148
	Owens Illinois							
	Facility ID 593							
	Tracy		785				785	\$18,801
Total San J	loaquin Valley	1754	10332	572			12658	\$303,159

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
San Luis O	bispo							
	Unocal Carbon Plant							
	Facility ID 4							
	Arroyo Grande			3951			3951	\$94,626
	Pacific Gas and Electric							
	Facility ID 8							
	Morro Bay		685	777			1462	\$35,015
Total San L	 _uis Obispo		685	4728			5413	\$129,641

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
Shasta								
	0-1							
	Calaveras Cement Company							
	Facility ID 2							
	Redding		559				559	\$13,388
Total Shasta			559				559	\$13,388

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
South Coast								
Los An	geles County							
	Southern California Edison							
	Facility ID 4477							
	Avalon		520				520	\$12,454
	ARCO Products Co.							
	Facility ID 800012							
	Carson	1018	2125	2320		1136	6599	\$158,046
	Ultramar Inc.							
	Facility ID 800026							
	Wilmington			567			567	\$13,580
	Chevron U.S.A., Inc.							
	Facility ID 800030							
	El Segundo	638	2586	1654		1752	6630	\$158,789
	Mobil Oil Corporation							
	Facility ID 800089							
	Torrance		2061	706		711	3478	\$83,298
	Southern California Edison, Alamite	OS .						
	Facility ID 800125	Ī						
	Long Beach		653				653	\$15,639
	Union Oil Company of California							
	Facility ID 800144							
	Wilmington		1707	1003			2710	\$64,905
	Texaco Refining & Marketing Inc.							
	Facility ID 800223							
	Wilmington		1008	727			1735	\$41,553

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
	Unocal Refinery & Marketing Corp.							
	Facility ID 800319							
	Carson		789				789	\$18,897
San B	ernardino County							
	California Portland Cement							
	Facility ID 800181							
	Colton		2090				2090	\$50,056
Total South Coast		1656	13539	6977		3599	25771	\$617,215

District	Facility Name	ROG	NOx	SOx	PM10	CO	Total Emissions	Fees
	_							
Ventura								
	Southern California Edison, Mandalay							
	Facility ID 13							
	Oxnard		546				546	\$13,077
Total Ventura			546				546	\$13,077

Air District	ROG	NOx	SOx	PM10	СО	Total Emissions	Fees
Bay Area	9,948	23,244	16,342			49,534	\$1,186,339
Kern (MDAB)		6,174				6,174	\$147,867
Mojave Desert		17,857	1,473	535		19,865	\$475,767
Monterey Bay		4,986				4,986	\$119,415
San Diego	1,225	2,296				3,521	\$84,328
San Joaquin Valley	1,754	10,332	572			12,658	\$303,159
San Luis Obispo		685	4,728			5,413	\$129,641
Shasta		559				559	\$13,388
South Coast	1,656	13,539	6,977		3,599	25,771	\$617,215
Ventura		546				546	\$13,077
Total Emissions	14,583	80,218	30,092	535	3,599	129,027	\$3,090,197

Rate (\$/ton) = (\$3,000,000 + \$90,000 - \$0) / 129,027= \$23.95 per ton